

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

James W. Gardener/Mastermind Realty	:	
-vs-	:	
Illinois Bell Telephone Company	:	00-0682
	:	
Complaint as to incorrect billing in	:	
Maywood, Illinois.	:	

PROPOSED ORDER

By the Commission:

On October 11, 2000, James W. Gardener, d/b/a Mastermind Realty, filed a Complaint with the Illinois Commerce Commission in which he claimed that Ameritech overcharged Mastermind for telephone service from September of 1996 through August of 2000.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for a hearing on the merits of Mr. Gardener's Complaint on June 8, 2001. Mr. Gardener appeared *pro se* and Ameritech was represented by counsel. At the conclusion of the hearing, the record was marked "Heard and Taken."

The Positions of the Parties

The Complainants alleged that in September or October of 1996, Mr. Gardener contacted Ameritech and asked Ameritech to change the type of service it was providing to Mastermind, so that Mastermind would only receive incoming calls. Thus, Mastermind's employees were "blocked," from making outgoing calls. According to the Complaint, Ameritech nevertheless continued to charge Mastermind Realty for outgoing calls. The Complainants also generally averred that the amount of Mastermind's bills were excessive.

Ameritech contended that its actions were lawful, as, according to Ameritech, it imposed the charges in question in full conformance with its tariffs and the applicable laws. Ameritech also contended that, with the exception of October of 1996, it did not charge Mastermind for outgoing calls.

The Evidence

At the time in question, Mastermind Realty had three telephone lines. (Tr. 98). Mastermind had Centrex service, which is a type of service Ameritech offers to businesses. Centrex' primary feature is an internal intercom. Ameritech does not charge its customers for internal calls made on this intercom. (Tr. 141-42; 158).

Mr. Gardener testified that Ameritech and Mastermind were "even" as of September of 1996; Mastermind did not contest any telephone bill incurred prior to that time. (Tr. 205-207). According to Mr. Gardener, while Ameritech "overbilled" Mastermind from September of 1996 through November of 1996, Ameritech later fully credited Mastermind for the excessive charges. (Tr. 65-66).

Mr. Gardener also testified that in December of 1996, he was informed by an Ameritech representative that his monthly service for three telephone lines, all with Centrex service and all "blocked" from incoming calls, would be approximately \$52.00 per month. (Tr. 66). This amount did not include taxes or surcharges. (Tr. 97). Including taxes and other charges, Mr. Gardener estimated that Mastermind's telephone bills would be approximately \$61.00 to \$62.00 per month. (Tr. 68). After receiving bills approximating \$62.00 per month, Mr. Gardener felt that \$62.00 would be the amount of Mastermind's monthly telephone bill. (*Id.*).

Mr. Gardener also testified that he knew that Mastermind's bills would increase from time to time, due to an increase in the line charges, or due to the imposition of service charges. (Tr. 68). Mr. Gardener expected an occasional increase in the rates for telephone service as well; he knew Ameritech was in business to make money. (Tr. 73-74, 77). Later, Mr. Gardener testified that he did not think Mastermind should have to pay any charge additional to the base rate for local incoming calls, such as the charge for a 9-1-1 system, or taxes. (Tr. 104-105).

The testimony and Mastermind's telephone bills establish that Mastermind's telephone bill for October of 1996 reflects a charge for outgoing local telephone calls. (Complainant's Ex. 7). The October, 1996 telephone bills was the only time during the time period in question that Mastermind was billed for outgoing calls. Ameritech's tariffs, which were entered into evidence, establish that the charges imposed upon Mastermind and the surcharges, such as the imposition of taxes, were in accordance with Ameritech's tariffs and the applicable laws. (Respondent's Exhibits 2-5). These charges increased from time to time, in accordance with Ameritech's tariffs, due to increases in the charges imposed for the Centrex service. (*Id.*).

Mastermind's bills from Ameritech for the time period in question established that the reason for any charge in excess of the monthly rate and the mandated surcharges was that often, Mastermind had previous balances because, in previous months, Mastermind either had not paid part of the bill, or, it had not paid the bill at all. Thus, the following month's bill would often include a past due amount, to which, late charges was imposed. The amounts Mastermind claims it was "overbilled" were past due charges. The disputed telephone bills are as follows:

DATE	AMOUNT OF CURRENT CHARGES	AMOUNT OF PAST DUE CHARGES (Including late payment charges)	AMOUNT PAID
9/4/96	139.62 ¹	286.56	26.18
10/4/96	146.29	426.18	426.18
11/4/96	255.71CREDIT	00.00	00.00
12/4/96	97.00-18.93CREDIT	00.00	00.00
1/4/97	66.46	85.97	00.00
1/31/97	61.13	85.97	85.97
3/3/97	62.33	66.46	00.00
3/31/97	86.80	128.79	128.79
4/4/97	88.20	87.76	61.80
5/2/97	92.94	115.41	00.00
6/4/97	91.60	210.44	189.00
7/4/97	86.20	112.58	00.00
8/4/97	86.20	201.10	122.40
9/4/97	86.20	165.55	61.20

¹ Mastermind's bills prior to October of 1998 are included for historical accuracy. The Complaint at bar was filed in October of 2000 and therefore, it was not timely filed with regard to bills incurred prior to October of 1998. 220 ILCS 5/9-252; 200 ILCS 5/9-252.1.

10/4/97	86.20	192.40	00.00
11/4/97	86.20	281.75	122.40
12/4/97	252.52*	367.95	227.52
1/4/98	88.46*	275.65	63.46
2/4/98	99.60*	303.57	61.20
3/4/98	75.41*	345.39	50.41
4/4/98	87.51*	374.15	62.51
5/4/98	98.89	403.24	62.51
6/4/98	121.64 ²	441.19	00.00
7/4/98	106.50	367.16(after deduction of a credit of 195.67)	125.02
8/4/98	106.08	94.64(after deduction of a credit of 254.00)	00.00
9/4/98	106.08	202.28	00.00
10/4/98	165.95	311.46	64.94
11/4/98	106.05	417.16	129.88
12/4/98	43.01CREDIT	387.98	00.00
1/4/99	106.05	351.36	129.88
2/4/99	106.47	327.78	00.00
3/4/99	109.23	438.84	130.24
4/4/99	92.24	421.99	66.00
5/4/99	107.24	88.33(after deduction of a	

* In these months, Ameritech imposed charges on behalf of third-party carriers, such as MCI. Mastermind's claim only concerns charges imposed by Ameritech on its own behalf. (*See, e.g.*, Tr. 110-111, 231). Moreover, Mastermind was later fully credited for these charges. (Tr. 223-229).

² The tariff increased for the Centrex intercom service.

		a credit of 359.90)	66.00
6/4/99	106.22	130.08	65.09
7/4/99	76.22	172.25	8.35
8/4/99	76.50	220.12	65.09
9/4/99	76.36	232.22	132.00
10/4/99	84.33 ³	178.24	72.40
11/4/99	83.31	190.87	00.00
12/4/99	82.44	276.07	144.00
1/4/2000	88.23	215.29	72.06
2/4/9000	93.38	232.35	72.06
3/4/2000	102.67	254.76	72.06
4/4/2000	93.27	286.80	00.00
5/4/2000	82.97	382.86	148.06
6/4/2000	82.99	319.40	00.00
7/4/2000	83.04	405.23	144.00
8/4/2000	147.42	346.00	00.00

The bills, which were entered into evidence, establish from November of 1996 through August of 2000, Ameritech billed Mastermind for the following types of service or service-related charges:

A monthly service charge for service for Centrex service, (only receiving incoming calls) to three telephones, 9-1-1 Emergency Services, various infrastructural charges, Telecommunications Relay Services, additional State and Municipal Charges, and Federal and State taxes. For example, in July of 1999, Mastermind's total current charges were 76.22. This represents the following:

³ The tariff increased for the Centrex service.

Monthly charge for telephone service	\$48.92
Federal Access charge	16.17
9-1-1 Billed for local Gvt.	1.70
Mun. Add'l Charges	2.52
State infrastructure maintenance	.33
State Add'l Charges	.05
Number portability surcharge	1.23
Infrastructure Maintenance credit	2.37CREDIT
Telecomm. Relay System	.02
Franchise fee	1.14
Federal Taxes (3%)	1.96
State Taxes (7%)	4.56
<hr/> Total:	<hr/> \$76.22

Kenneth Leach oversees the Centrex product for Ameritech. (Tr. 149). Mr. Leach testified that Ameritech imposed charges additional to those for local service for Mastermind's three Centrex lines, such as the charge for the Telecommunications Relay Service, the Interstate Access Charges and taxes, because it was required by law to do so. (Tr. 60-161). Leach also established that the amounts for which Mastermind was billed correspond to Ameritech's current (at the time in question) tariffs. (Tr. 172).

Wanda Brooks, who is a customer advocate at Ameritech's billing office, testified that from time to time, Ameritech's rates can increase, and, federally mandated charges get added to customers' bills. (Tr. 127).

Commission Analysis And Conclusion

The Petitioners contend that since December of 1996, Ameritech consistently overcharged Mastermind, as, Mr. Gardener only contracted on behalf of Mastermind for incoming calls. According to Mr. Gardener, he did not agree to pay anything extra, like taxes. (Tr. 104-105). However, this testimony contradicts Mr. Gardener's earlier testimony that he knew Ameritech would impose taxes and other charges beyond the base rate for "blocked" local service. (Tr. 68.). Also, Mr. Gardener acknowledged that from time to time, Ameritech's bills would increase. (Tr. 68; 73-74; 77). And, there was no evidence establishing that Ameritech agreed to provide telephone services without imposing surcharges that it is required by law to impose, such as taxes.

Additionally, the telephone bills that were entered into evidence establish that Ameritech's bills for its services were high because often, in previous months, Mastermind had not paid part of, or all of, its bills. Thus, Mastermind's telephone bills for the time period in question included past due balances, and interest on the past due balances. There is no evidence in this record indicating

that imposition of past due balances and interest on those past due balances was contrary to law or that it did not reflect what was owed.

For example, Mastermind's telephone bill in January of 1997 was for \$152.44, of which, \$85.97 were past due charges. That month, it paid \$85.47, leaving a past due balance of \$66.46. In February of 1997, it was billed for \$128.79, including the \$66.46 past due balance. That month, Mastermind paid nothing. In March of 1997, Ameritech billed Mastermind a total of \$215.59, of which, \$128.79 was past due. Also in March, Mastermind paid Ameritech \$128.79, leaving a past due balance for that month of \$86.80.

Further, with the exception of telephone calls appearing on Mastermind's telephone bill for October of 1996, the evidence establishes that Mastermind was not billed for outgoing calls. Mastermind's claim that Ameritech continued to bill it for outgoing calls after the "block" was placed on its three lines is unsubstantiated by the evidence. And, as shall be discussed below, the Complaint at bar is untimely filed as to charges incurred prior to October of 1998. Therefore, the Commission lacks jurisdiction to determine the propriety of the charges imposed on Mastermind's October, 1996 telephone bill.

With respect to the telephone charges incurred prior to October of 1998, the Complaint is untimely. Section 9-252 of the Public Utilities Act requires that "all Complaints for the recovery of damages shall be filed with the Commission within 2 years from the time the produce, commodity or service as to which complaint is made was furnished or performed. . ." 220 ILCS 5/9-252; See *also*, Patel v. Commonwealth Edison Co., 1999 Ill. PUC Lexis 932 (1999). Also, the Act provides that refunds for incorrect billing must be filed within two years after the date upon which the customer first has knowledge of the incorrect billing. 220 ILCS 5/9-252.1; Delaney v. Commonwealth Edison Co., 1998 Ill. PUC Lexis 635 (1998). All of the bills were sent to Mastermind's business address. In this state, there is a rebuttable legal presumption that something mailed is received. *Liquorama Inc. v. American National Bank*, 86 Ill. App. 3d 974, 408 N.E.2d 373 (1st Dist. 1980). Mastermind received its telephone bills approximately one month after the charges were incurred, and it therefore had knowledge of the incorrect billing approximately one month after the charge incurred.

The Complaint at bar was filed on October 13, 2000. All of the telephone bills incurred prior to October of 1998 are outside the two-year period provided by statute in which to seek a refund and they are outside the two-year period for the recovery of damages.

The Commission notes that Mr. Gardener did not present any evidence indicating that his Agreement with Ameritech provided that it would provide services without adding surcharges that it is required by law to impose, such as taxes. Moreover, Ameritech provided its tariff for the times in question, which establish that the charges imposed were in full conformance with its tariffs.

There is no indication, from the evidence presented, that Ameritech overcharged Mastermind.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, and being fully advised in the premises, is of the opinion and finds that:

- (1) the Respondent, Ameritech, is a public utility within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject-matter herein;
- (3) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the evidence of record and are adopted as findings of fact and law herein;
- (4) with regard to Mastermind Realty's telephone bills that were incurred previous to October of 1998, the Complaint in this Docket is untimely filed;
- (5) with the exception of the charges appearing on Mastermind's telephone bill for October of 1996, Ameritech did not continue to impose charges for outgoing calls after Mastermind's phone lines were "blocked" from outgoing calls;
- (6) Ameritech did not violate the Public Utilities Act or pertinent regulations when seeking to impose the charges in question;
- (7) when charging Mastermind Realty for past due balances, Ameritech did not violate Illinois law and Ameritech legally charged what was owed, but unpaid, in previous months, as well as interest on that past due balance;
- (8) the Complaint filed by James W. Gardener and Mastermind Realty against Ameritech may properly be denied.

IT IS THEREFORE ORDERED that the Complaint filed by James W. Gardener and Mastermind Realty against Ameritech on October 13, 2000, be, and the same is hereby, denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Order Dated:

July 27, 2001

Briefs on Exceptions must be served on the parties, the Administrative Law Judge and filed with the Chief Clerk no later than August 10, 2001.

Reply Briefs must be served on the parties, the Administrative Law Judge and filed with the Chief Clerk no later than August 17, 2001.

Claudia Sainsot
Administrative Law Judge